

IN THE CIRCUIT COURT FOR EIGHTEENTH JUDICIAL DISTRICT
DuPAGE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State Illinois, and)
ex rel. JOSEPH E. BIRKETT, State's)
Attorney for DuPage County,)

Plaintiffs,)

v.)

No. 2003CH000979

PRECISION BRAND PRODUCTS, INC., a)
Delaware corporation, SCOT, INC.,)
an Illinois corporation, WILLIAM)
HELWIG, Individually, PRINCIPAL)
MANUFACTURING, CORP., an Illinois)
corporation, ARROW GEAR COMPANY,)
an Illinois Corporation, REXNORD,)
INC., a Wisconsin corporation,)

Defendants.)

FIRST AMENDED COMPLAINT FOR INJUNCTION AND CIVIL PENALTIES

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency and ex rel. JOSEPH E. BIRKETT, State's Attorney for DuPage County on his own motion, complains of the Defendants PRECISION BRAND PRODUCTS, INC., a Delaware corporation, SCOT, INC., an Illinois corporation, WILLIAM HELWIG, Individually, PRINCIPAL MANUFACTURING, CORP., an Illinois corporation, ARROW GEAR COMPANY, and Illinois corporation, and REXNORD, INC., a Wisconsin corporation, as follows:



COUNT I

SUBSTANTIAL DANGER TO THE ENVIRONMENT,
PUBLIC HEALTH, AND WELFARE

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") and *ex rel.* JOSEPH E. BIRKETT, State's Attorney for DuPage County on his own motion pursuant to Section 43(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/43(a) (2002), and is an action to restrain an ongoing substantial danger to human health and the environment.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 4315 ILCS 5/4 (2002), and charged *inter alia*, with the duty of enforcing the Act.

3. Defendant PRECISION BRAND PRODUCTS, INC. ("Precision") is a Delaware corporation, duly authorized to do business and is doing business in the State of Illinois.

4. At all times relevant to the Complaint, Precision is and was the owner and/or operator of a facility located at 2250 Curtiss St., Downers Grove, County of DuPage, Illinois ("Precision Facility" or "Precision Site"). Precision is engaged in the business of cutting metal coils, distribution of hose clamps, and thread rolling operations.

5. In 1980, Precision bought assets and assumed

liabilities for DuPage Manufacturing Company, then located in the same facility at 2250 Curtiss St. DuPage Manufacturing Company used trichloroethylene ("TCE") from approximately 1970 through 1978 and tetrachloroethylene ("PCE") from approximately 1978 through 1979 as a vapor degreaser in their operations.

6. TCE, PCE, and vinyl chloride are chlorinated solvents and volatile organic compounds ("VOC").

7. Defendant SCOT INC., ("Scot") is an Illinois corporation in good standing.

8. At all times relevant to the Complaint, Scot is and was the owner and operator of a facility located at 2525 Curtiss St., Downers Grove, County of DuPage, Illinois ("Scot Facility" or "Scot Site"). The Scot Facility consists of 3.8 acres with a 40,600 square foot building. Scot has used various chlorinated solvents, including but not limited to TCE and PCE, at the Scot Facility since 1958. Operations at the Scot Site initially included small engine manufacturing until approximately 1976, globe manufacturing from 1960 through the late 1970's, and since 1976 Scot has manufactured precision engineered pyrotechnic components and subsystems for use in aerospace applications.

9. William Helwig ("Helwig"), an individual, is the owner of property located at 5400 S. Janes Avenue, Downers Grove, DuPage County, Illinois ("Helwig Facility" or "Helwig Site" or "Janes Avenue"). On information and belief, Helwig has at various times leased the Helwig site for various manufacturing operations, which operations included the use of TCE.

10. Defendant PRINCIPAL MANUFACTURING, CORP., ("Principal") an Illinois corporation in good standing, was the operator of a facility located at 5400 S. Janes Avenue, Downers Grove, DuPage County, Illinois ("Helwig Facility" or "Helwig Site" or "Janes Avenue").

11. Principal operated at the Helwig Site in the 1970's and during which time, on information and belief, Principal employees dumped or disposed 55 gallon drums of spent TCE on the ground outside the facility. This occurred for several years at the Helwig Site.

12. Defendant ARROW GEAR COMPANY, ("Arrow"), is an Illinois corporation in good standing.

13. At all times relevant to this Complaint, Arrow was and is the owner and operator of a facility located at 2301 Curtiss St., Downers Grove, County of DuPage, Illinois ("Arrow Facility" or "Arrow Site"). Since 1957, Arrow has manufactured high precision gears and gear blanks for use in aircraft.

14. Defendant REXNORD, INC., ("Rexnord"), is a Wisconsin corporation, doing business in the State of Illinois.

15. At all times relevant to this Complaint, Rexnord was and is the owner and operator of a facility located at 2400 Curtiss St., Downers Grove, County of DuPage, Illinois ("Rexnord Facility" or "Rexnord Site"). Rexnord is a supplier of power transmission components, drives, and conveying equipment for process industries worldwide.

16. The Precision Site, the Scot Site, the Janes

Avenue/Helwig Site, the Arrow Site, and the Rexnord Site are all located in the Ellsworth Industrial Park.

17. Soil samples collected in 2002 at the Precision Facility showed the presence of TCE at a maximum concentration of 10,000 parts per billion ("ppb") and PCE at a maximum concentration of 580 ppb. Shallow groundwater samples collected in 2002 at the Precision Facility showed the presence of TCE at a maximum concentration of 190 ppb.

18. Soil samples collected in 2002 at the Scot Facility showed the presence of TCE at a maximum concentration of 130 ppb and PCE at a maximum concentration of 120,000 ppb. Groundwater collected from the bedrock aquifer in 2002 at the Scot Facility showed the presence of PCE at a maximum concentration of 12 ppb.

19. Soil samples collected in 2002 at the Helwig Site showed the presence of TCE at a maximum concentration of 500,000 ppb, PCE at a maximum concentration of 2,300 ppb and vinyl chloride at a maximum concentration of 340 ppb.

20. Soil samples collected in 2002 at the Arrow Facility showed the presence of TCE at a maximum concentration of 840 ppb. Shallow groundwater samples collected in 2002 showed the presence of PCE at a maximum concentration of 29 ppb. Groundwater samples taken from the bedrock aquifer in 2002 showed the presence of TCE at a maximum concentration of 13 ppb.

21. Soil samples collected in 2002 from the Rexnord Facility showed the presence of TCE at a maximum concentration of 230 ppb and PCE at a maximum concentration of 9,500 ppb. Shallow

groundwater samples taken in 2002 show the presence of TCE at a maximum concentration of 37 ppb and PCE at a maximum concentration level of 38 ppb. Groundwater samples taken from the bedrock aquifer in 2002 show the presence of PCE at a maximum concentration of 13 ppb.

22. The groundwater standards for TCE, PCE, and vinyl chloride, are identified in Section 620.410 of the Illinois Pollution Control Board ("Board") Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410.

23. The maximum contaminant level ("MCL") for TCE in groundwater is 5ppb. The MCL for PCE in ground water is 5 ppb. The MCL for vinyl chloride in groundwater is 2 ppb.

24. The MCL for TCE in the groundwater was exceeded at Precision, Arrow, and Rexnord. The MCL for PCE in the groundwater was exceeded at Scot and Rexnord.

25. Surrounding the Ellsworth Industrial Park where Defendants are located, are residential areas with schools and homes. Approximately 800 homes downgradient of the Ellsworth Industrial Park use groundwater from wells for drinking, bathing, and other potable uses. Hydrogeological data gathered by the United States Environmental Protection Agency ("USEPA") indicates that groundwater in the vicinity of Ellsworth Industrial Park flows generally to the South and Southeast.

26. In late 2001 and 2002, the Illinois EPA sampled approximately 546 potable wells located South and Southeast of the Ellsworth Industrial Park.

27. Of the approximately 546 drinking water wells sampled, 450 showed the presence of TCE and 352 showed the presence of PCE. Of the approximately 546 drinking water wells sampled, approximately 109 exceeded the MCL for TCE and 83 exceeded the MCL for PCE.

28. Since discovering the TCE, PCE, and vinyl chloride contamination on Defendants' sites and in the groundwater, Defendants have failed to define the nature and extent of the on and off-site TCE, PCE and vinyl chloride contamination, and failed to perform any corrective action either on-site or off-site.

29. TCE and PCE are probable human carcinogens and mutagens. TCE and PCE exposure at various concentrations also causes eye irritation, nausea, dizziness, headache, tremors, confusion, skin inflammation, reduced reasoning ability, impaired short term memory, and possible death from respiratory or cardiac failure.

30. Vinyl chloride is a known human carcinogen. Vinyl chloride exposure at various concentrations also causes eye irritation, nausea, dizziness, headache, tremors, confusion, skin inflammation, reduced reasoning ability, impaired short term memory, liver damage, nerve damage, and possible death from respiratory or cardiac failure.

31. Section 43(a) of the Act, 415 ILCS 5/43(a) (2002), provides, in relevant part, as follows:

a. In circumstances of substantial danger to the

environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons, . . . the Attorney General, upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction to halt any discharge or other activity causing or contributing to the danger or to require such other action as may be necessary. The court may issue an ex parte order and shall schedule a hearing on the matter not later than 3 working days from the date of the injunction.

32. Defendants by their actions as alleged herein, have created circumstances of substantial danger to the environment and the public health and welfare, by causing, threatening or allowing the VOC contamination of potable water in the vicinity of their Facilities in direct contravention of the requirements of the Act.

33. The substantial danger alleged herein shall continue until such time as the Defendants demonstrate that they have taken the proper measures to provide a safe, alternative potable water supply to affected and potentially affected residents and, after fully defining the nature and extent of VOC contamination, fully remediating said contamination.

34. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the relevant environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of immediate and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff prays that this Court grants an immediate injunction, and after a trial a permanent injunction,

in favor of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and against Defendants, and enter an order with respect to Count I:

1. Finding that Defendants created and maintained a substantial danger to the environment and public health and welfare;

2. Ordering Defendants to immediately provide a safe, alternative potable water supply to affected and potentially affected residents; to fully define the nature and extent of the contamination and to take all necessary corrective action to provide a permanent alternative source for potable drinking water;

3. Enjoining Defendants from any further violation of Section 43(a) of the Act;

4. Ordering Defendants to take all necessary steps to ensure that future violations of Section 43(a) of the Act will not occur;

5. Assessing against Defendants, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violations continued;

6. Ordering Defendants to pay all costs, including sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Granting other such relief as this Court deems

appropriate and just.

COUNT II

WATER POLLUTION

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA and *ex rel.* JOSEPH E. BIRKETT, State's Attorney for DuPage County on his own motion, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2002).

2-30. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 30 of Count I, as paragraphs 2 through 30 of this Count II.

31. Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

32. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

33. TCE, PCE and vinyl chloride are "contaminants" as that term is defined in Section 3.165 of the Act.

34. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides, in relevant part, the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, . . . or any other legal entity, or their legal representative, agent or assigns.

35. The Defendants are "persons" as that term is defined in Section 3.315 of the Act.

36. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), provides the following definition:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

37. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), provides the following definition:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

38. The groundwater underlying the Facilities in both the shallow and bedrock aquifers are "waters" as that term is defined in Section 3.550 of the Act.

39. Pursuant to authority granted in Section 8(a) of the Illinois Groundwater Protection Act, 415 ILCS 55/8(a) (2002), the

Board promulgated rules and regulations to establish comprehensive water quality standards, located at Subtitle F, Chapter I of 35 Ill. Adm. Code ("Board Water Quality Regulations"), which are specifically aimed at the protection of groundwater.

40. The groundwater underlying and surrounding the Facility is classified as Class I groundwater as defined in Section 620.210 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.210.

41. Section 620.405 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.405, provides as follows:

General Prohibitions Against Violations of
Groundwater Quality Standards -

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

42. Section 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410, provides, in relevant part, as follows:

Groundwater Quality Standards for Class I: Potable
Resource Groundwater

* * *

(b) Organic Chemical Constituents -

Except due to natural causes or as provided in Section 620.450 or subsection (c), concentrations of the following organic chemical constituents shall not be exceeded in Class I groundwater:

<u>Constituent</u>	<u>Standard (ppb)</u>
Trichloroethylene*	5
Perchloroethylene*	5
Vinyl Chloride**	2

- * Denotes a probable human carcinogen.
- ** Denotes a known human carcinogen.

43. The groundwater standard for TCE, as identified in Section 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410, was exceeded in the groundwater underlying the Facilities and in approximately 109 homes located directly south of these Facilities using groundwater for potable uses.

44. The groundwater standard for PCE, as identified in Section 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410, was exceeded in the groundwater underlying the Facilities and in approximately 83 homes located directly south of these Facilities using groundwater for potable uses.

45. On information and belief, the TCE, PCE and vinyl chloride present at Defendants' Facilities in both the soil and the groundwater, migrated to the nearby residential potable water supply wells located directly south of their Facilities, thereby contaminating these wells.

46. By contaminating groundwater with TCE, PCE and vinyl chloride, contaminants as defined by the Act, Defendants caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), and Sections 620.405 and 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.405 and 620.410.

47. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the relevant environmental statutes and regulations will continue

until and unless this Court grants equitable relief in the form of immediate and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff prays that this Court grants a preliminary injunction, and after a trial a permanent injunction, in favor of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and against Defendants, and enter an order with respect to Count II:

1. Finding that Defendants violated Section 12(a) of the Act and 35 Ill. Adm. Code 620.405;

2. Enjoining the Defendants from any further violation of Section 12(a) of the Act and 35 Ill. Adm. Code 620.405;

3. Ordering Defendants to immediately provide a safe, alternative potable water supply to affected and potentially affected residents; to fully define the nature and extent of the contamination; and to pay all costs to provide a permanent alternative source for potable drinking water;

4. Assessing against Defendants, pursuant to 415 ILCS 5/42(a) (2002), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violations continued thereafter;

5. Ordering Defendants to pay all costs, including sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the State in its pursuit of this action and to pay damages for injury to state waters; and

6. Granting other such relief as this Court deems appropriate and just.

COUNT III

WATER POLLUTION HAZARD

1-30. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 30 of Count II, as paragraphs 1 through 30 of this Count III.

31. Section 12(d) of the Act, 415 ILCS 5/12(d) (2002), provides as follows:

No person shall:

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

32. The TCE, PCE and vinyl chloride, contaminants, remain in the soil overlying the groundwater at these Facilities.

33. By causing or allowing contaminants on the ground at their Facilities that remain in the soil overlying the groundwater at their Facilities such that the contaminants migrated into area groundwater, Defendants deposited contaminants upon the land in such place and manner so as to create a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

34. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the relevant environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of immediate and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff prays that this Court grants a preliminary injunction, and after a trial a permanent injunction, in favor of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and against Defendants, and enter an order with respect to Count III:

1. Finding that Defendants violated Section 12(d) of the Act;
2. Enjoining the Defendants from any further violation of Section 12(d) of the Act;
3. Ordering Defendants to immediately provide a safe, alternative potable water supply to affected and potentially affected residents; to fully define the nature and extent of the contamination; and to pay all costs to provide a permanent alternative source for potable drinking water;
4. Assessing against Defendants, pursuant to 415 ILCS 5/42(a) (2002), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violations continued thereafter;
5. Ordering Defendants to pay all costs, including sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the State in its pursuit of this action and to pay damages for injury to state waters; and
6. Granting other such relief as this Court deems appropriate and just.

COUNT IV

CREATION AND MAINTENANCE OF A COMMON LAW PUBLIC NUISANCE

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and ex rel. JOSEPH E. BIRKETT, State's Attorney for DuPage County on his own motion. The Attorney General is the chief legal officer of the State of Illinois, and has the powers and duties prescribed by law pursuant to Section 15, Article 5 of the Illinois Constitution of 1970. Thus, this Count is brought pursuant to the powers of the Attorney General and the State's Attorney to institute an action at common law on behalf of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, to abate a public nuisance and to protect the health, safety and welfare of the PEOPLE OF THE STATE OF ILLINOIS.

2-30. Plaintiff realleges and incorporates by reference paragraphs 2 through 30 of Count I, as paragraphs 2 through 30 of this Count IV.

31. The TCE, PCE and vinyl chloride on the ground at these Facilities continue to impact groundwater underlying these Facilities, and groundwater used for drinking, bathing, and other potable uses in the vicinity of these Facilities and further threatens other potable wells in the area.

32. TCE and PCE are probable human carcinogenic and mutagenic contaminants that, when released to the environment, injuriously affects the safety and health of the public, and works substantial annoyance, inconvenience, and injury to the public. Vinyl chloride is a known human carcinogenic and

mutagenic contaminant that, when released to the environment, injuriously affects the safety and health of the public, and works substantial annoyance, inconvenience, and injury to the public.

33. As a result of the foregoing, Defendants' Facilities constitute a public nuisance at common law.

WHEREFORE, Plaintiff prays that this Court grants a preliminary injunction, and after a trial a permanent injunction, in favor of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and against Defendants, and enter an order with respect to Count IV:

1. Finding that the Facilities as described herein constitutes a public nuisance;
2. Enjoining Defendants from the maintenance of a common law public nuisance;
3. Ordering Defendants to immediately provide a safe, alternative drinking water supply to affected and potentially affected residents; to fully define the nature and extent of the contamination; and to pay all costs to provide a permanent alternative source for potable drinking water;
4. Ordering Defendants to pay all costs, including sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the State in its pursuit of this action and to pay damages for injury to state waters; and
5. Granting such other relief as this Court deems appropriate and just.

COUNT V

COST RECOVERY

1. This count is brought pursuant to Section 22.2 of the Act, 415 ILCS 5/22.2 (2002), on behalf of the People of the State of Illinois, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA and by JOSEPH E. BIRKETT, State's Attorney for DuPage County on his own motion, and is an action to recover the removal and/or remedial costs incurred by the People of the State of Illinois as a result of a release or substantial threat of release of hazardous substances from the site.

2-30. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 30 of Count I as paragraphs 2 through 30 of this Count V.

31. The Illinois EPA has and continues to incur costs at the site for "remedial actions" and "response actions" related to the soil and groundwater contamination.

32. As of December 31, 2002, the Illinois EPA has incurred costs of \$773,523.24 for the sampling of the approximately 546 homes located to the South and Southeast of the Ellsworth Industrial Park, and for other remedial and response actions.

33. Section 22.2(f) of the Act, 415 ILCS 5/22.2(f) (2002), provides in pertinent part, as follows:

- f. Notwithstanding any other provisions or rule of law, and subject only to the defenses set forth in Subsection (j) of this Section, the following

persons shall be liable for all costs of removal or remedial action incurred by the State of Illinois or any unit of local government as a result of a release or substantial threat of release of hazardous substance or pesticide:

1. The owner and operator of a facility or vessel from which there is a release or substantial threat of release of a hazardous substance or pesticide;
2. Any person who at the time of disposal, transport, storage or treatment of a hazardous substance or pesticide owned or operated the facility or vessel used for such disposal, transport, treatment or storage from which there was a release or substantial threat of release of any such hazardous substance or pesticide;

34. Section 22.2(k) of the Act, 415 ILCS 5/22.2(k) (2002), provides:

- k. If any person who is liable for a release or substantial threat of release of a hazardous substance or pesticide fails without sufficient cause to provide removal or remedial action upon or in accordance with a notice and request by the Agency or upon or in accordance with any order of the Board or any court, such person may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount of any costs incurred by the State of Illinois as a result of such failure to take such removal or remedial action. The punitive damages imposed by the Board shall be in addition to any costs recovered from such person pursuant to this Section and in addition to any other penalty or relief provided by this Act or any other law.

35. Sections 3.215, 3.315, 3.395, 3.400, and 3.405 of the Act, 415 ILCS 5/3.215, 5/3.315, 5/3.395, 5/3.400, and 5/3.405 (2002), provide the following definitions:

Section 3.215

"HAZARDOUS SUBSTANCE" means (A) any substance designated pursuant to Section 311(b) (2) (A) of the

Federal Water Pollution Control Act (P.L. 92-500), as amended, (B) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (P.L. 96-510), as amended, (C) any hazardous waste, (D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (P.L. 92-500), as amended, (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act (P.L. 95-95), as amended; (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act (P.L. 94-469), as amended. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas.

Section 3.315

"PERSON" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

Section 3.395

"RELEASE" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (a) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; (b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; (c) release of a source, byproduct, or special nuclear material from a nuclear incident, as those items are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and, (d) the normal application of fertilizer.

Section 3.400

"REMEDIAL ACTION" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. . . . The term includes offsite transport of hazardous substances, or the storage, treatment, destruction or secure disposition offsite of such hazardous substances or contaminated materials.

Section 3.405

"REMOVE" or "REMOVAL" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from a release or threat of release. . . .

36. Section 22.2(h) (1) and (2) of the Act, 415 ILCS 5/22.2(h) (1) and (2) (2002), provide, in pertinent part, the following definitions:

h. For purposes of this section:

1. The term "facility" means

- A. any building, structure, installation, equipment, pipe or pipeline excluding but not limited to any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling rock, or aircraft;
- B. any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located;

2. The term "owner or operator" means:

- A. Any person owning or operating a vessel or facility; or

37. The Defendants are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

38. Each of the Defendants' facilities described herein constitutes a "facility" as that term is defined in Section 22.2(h) (1) (A) and (B) of the Act, 415 ILCS 5/22(h) (1) (A) and (B) (2002).

39. Each Defendant is an "owner and/or operator" of its facility as those terms are defined in Section 22.2(h) (2) (A) of the Act, 415 ILCS 5/22.2(h) (2) (A) (2002).

40. The substances referred to in paragraph 6 of this Count V are "hazardous substances" within the meaning of Section 3.215, and 22.2(f) of the Act, 415 ILCS 5/3.215, and 5/22.2(f) (2002).

41. The release of hazardous substances from the facilities into the soil and groundwater, and into the drinking water wells located to the South and Southeast of the facilities constitute a "release" within the meaning of Sections 3.395 and 22.2(f) of the Act, 415 ILCS 5/3.395 and 5/22.2(f) (2002).

42. The Illinois EPA has and continues to incur costs for performing "remedial actions" as that term is defined by Sections 3.400 and 22.2(f) of the Act, 415 ILCS 5/3.400 and 5/22.2(f) (2002).

43. The Defendants are persons who, as owners and/or operators of the facilities are liable pursuant to Section 22.2(f) of the Act for all costs of removal and remedial actions as a result of the release or substantial threat of release of hazardous substances at the facilities.

WHEREFORE, Plaintiff, People of the State of Illinois, respectfully requests this Court to enter an order in favor of the Plaintiff and against the Defendants and enter an order with respect to Count V:

1. Finding that the Defendants are jointly and severally liable for all costs of removal or remedial action incurred by the State prior to July 1, 1996 and are severally liable for all costs incurred on or after July 1, 1996 pursuant to Section 22.2(f) of the Act;

2. Assessing joint and several liability for all removal and remedial action costs incurred by the State prior to July 1, 1996 and several liability for all costs incurred on and after July 1, 1996 against the Defendants;

3. Assessing damages pursuant to Section 22.2(k) of the Act in an amount not more than three times the amount of the costs incurred by the State against the Defendants;

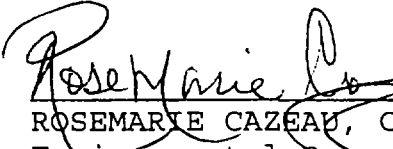
4. Assessing all costs of this proceeding, including expert witness and attorney fees, against the Defendants and further, ordering Defendants to pay damages for injury to state waters; and

5. Granting other such relief as this Court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS
ex rel., LISA MADIGAN
Attorney General of the
State of Illinois

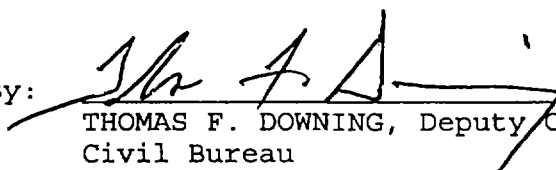
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

By: _____


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

PEOPLE OF THE STATE OF ILLINOIS
ex rel., JOSEPH E. BIRKETT
State's Attorney for
DuPage County

By: _____


THOMAS F. DOWNING, Deputy Chief
Civil Bureau

Of Counsel:

Elizabeth Wallace
Senior Assistant Attorney General
Environmental Bureau
188 West Randolph Street
Suite 2001
Chicago, IL 60601
(312) 814-5396

DEBORAH SMITH
Assistant State's Attorney
DuPage County State's Attorney's Office
505 North County Farm Road
Wheaton, IL 60187
(630) 682-7056

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